Executive Summary

Economic context and drivers of Better Regulation

Austria has one of the higher rates of GDP per capita levels in Europe. Like other OECD countries, it has however, been challenged by the effects of the economic and fiscal crisis. The Austrian government has improved its processes for strategic planning of public expenditure through budget reforms to set explicit performance targets for all key public services to facilitate the assessment of the costs of public activities against their social benefits and lead to efficient programme design. This output based budgeting will be enforced from 2013. In addition, strategies focused on reducing the administrative burdens on business and citizens are intended to improve the efficiency of the public sector. However, the OECD Economic Review (OECD 2009) also identified that, in the long-term, structural reforms in product and labour markets held the potential to boost output, improve trend growth and raise average per capita income levels. It encouraged an assessment of the impacts of prevailing regulations on cost, productivity and price outcomes in specific areas to identify the resulting impacts on potential supply and employment, and for targeted regulatory reforms to close these gaps. A policy goal of Better Regulation is ensuring that regulation promotes entrepreneurship and a competitive private sector, and achieves policy objectives at least cost to society. This at least points to the potential for Better Regulation strategies to improve the competitiveness of the economy through, for example, improved *ex ante* and *ex post* review of the effectiveness of regulation.

The public governance context for Better Regulation

Box 0.1. The federal structure and competences across the levels of government

Austria is a federal republic with some direct democratic features. It is based on the principles of a democratic republic (the law emanates from the people, it has an elected Head of State). Austria is a federal state and constitutional state (the administration of the State is carried out solely on the basis of laws). The fundamental rights and rights of personal liberty guaranteed in the Federal Constitution of 1920 were already incorporated in the Basic Law of the State in 1867.

The Austrian federal administrative structure consists of a four-tiered system comprising the federal government, the federal states (*Länder*), districts and municipalities. All political institutions established by the constitution are elected. Direct elections are held for the National Council (*Nationalrat*), the Federal President and the nine state parliaments (*Landtage*) and of municipal Mayors.

A number of instruments of direct democracy are used at the Federal and *Länder* level:

- *Referendum* – Introduced in 1972, referenda may be held on a law adopted by parliament. Their result is binding on the legislator.
- *Petition for a referendum* – A petition for a referendum differs from an actual referendum in that it involves collecting signatures. If a petition collects a minimum of 100 000 signatures, the National Council must take up the issue. However, it is not compelled to legislate on it. A petition therefore has no direct repercussions, but is mainly a political signal. It was introduced in 1973.

- *Consultations* – A consultation is held if the issue is of fundamental importance and concerns Austria as a whole, and the National Council decides to hold the consultation based on a motion by its members or the Federal Government.

The Federal Constitutional Law contains an exhaustive list of the competences conferred on the Federation, whereas the competences of the states are established by a general clause. The latter states that the *Länder* have the competence in a matter unless the Constitution expressly assigns it to the federal level. Overall, many legislative competences are conferred on the federal level while the *Länder* often play an implementing role, to the extent that Austria sometimes is described as a "centralised federal state".

The Federal Constitution distinguishes four general types of competence:

- Both legislation and execution are the responsibility of the Federation (Article 10 of the Federal Constitution).
- Legislation is the responsibility of the Federation, execution of the States (Article 11 of the Federal Constitution).
- The Federation is responsible for legislative principles, the States for translating these principles into law and executing them.
- Both legislation and execution are the responsibility of the States (Article 15 of the Federal Constitution).

An overlapping of rule-making responsibilities is not legally possible, because the allocation of the various powers is understood to be exclusive. This means that an area is exclusively and unambiguously assigned to the competence either of the Federation or of the *Länder*. According to the Austrian Constitutional Law, it is unimaginable that both these levels are competent in a specific area. However, this does not remove the possibility of dispute over the competence among the federal government or *Länder*. In cases of dispute the Constitutional Court determines at the application of the federal government or *Länder* whether an act of legislation or execution falls into the competence of the Federation or the *Länder*.

The Austrian political system has been classified as an extreme case of *consociational* democracy and neo-corporatism (Schmitter/Lehmbruch 1979). While the latter term describes the particularly intertwined relationship of key stakeholders organisations (the Social Partners) in the political, economic and social life of the republic, the first term refers to the dominant position held by the two largest parties of in the political system of the country. The conservative Austrian People's Party (ÖVP) and the Austrian Social Democratic Party (SPÖ) have formed most of the governing coalitions (based on the "historic compromise") and until the 1980s they have accounted for more than 80% of the electoral votes. A relative exception occurred during the period of the conservative government of the ÖVP and the Freedom Party (FPÖ) (2000-06), which moved in the direction of a more conflict oriented system where the importance of the social partnership diminished.

Source: Reponses of the Austrian Government to the OECD questionnaire; Federal Chancellery (2006;2007a); EUI (2008;2009).

Developments in Better Regulation and main findings of this review

Strategy and policies for Better Regulation

Better Regulation has successfully incorporated administrative reforms directed at improving administrative efficiency. Austria has an established history in promoting administrative reforms of which the programme of administrative burden reduction and e-Government are the most recent and prominent. In this context, the main driver of the Better Regulation programme is the goal

of improving public sector efficiency. There appears to be a strong appreciation of the potential for administrative burden reduction and e-Government to reduce the costs of government on citizens and business as well as to reduce the incidence of unnecessary costs of government activities on the budget. In support of this, a comprehensive programme of budget reform commencing in 2013 will place greater incentives on ministries to plan and manage their use of resources against government priorities. The Austrian federal government's administrative burden reduction programme has a number of strengths and appears to be on course to deliver the expected benefits. E-Government initiatives in particular have led to comparatively remarkable achievements. Over the past years, steady progress has been made to diffuse ICT to support administrative reform.

An emphasis on administrative efficiency is important, but it tends to narrow the conception of the potential for Better Regulation to improve the welfare of citizens and businesses. The main aim of administrative burden reduction programmes is lower administrative costs for companies and citizens principally brought about through a reduction in information obligations, and the budget reforms have significant potential to deliver programme efficiencies. This is an important, but limited objective. The broader perspective of better regulation, which seeks to ensure that regulations are effective and efficient and achieve public policy goals efficiently and effectively, cannot be fully addressed by burden reduction programmes. It requires a broader set of initiatives integrating Better Regulation with the design, implementation and review of new and existing regulation, including a fully fledged impact assessment process, a proactive and integrated policy for efficient implementation and enforcement of legislation, effective processes for public consultation and the integration of multilevel (*Länder* and EU) regulatory management into the policy.

The economic and competitiveness potential of Better Regulation as well as its potential to contribute to sustainable development is, as a result, not being fully exploited. The relative failure to define Better Regulation in broader terms means that there is a lack of focus on the potential economic and competitiveness benefits which it could deliver, and the broader dimensions of sustainable reform. In Austria the links between administrative reform, public sector efficiency and more efficient systems of federalism and fiscal policy are all clearly articulated in policy arrangements. Better regulation has a role in promoting these goals but should be viewed as a strategy in its own right.

There are significant potential economic opportunities for Austria through improved regulatory management, in particular competition assessment and promoting productivity enhancement in the economy. The OECD Economic Survey of Austria identified that assuring the efficient functioning of the *Länder* is critical to the development of the credible fiscal consolidation measures that are required in Austria (OECD 2009:12). It also noted the potential for differences in *Länder* regulation to reduce market competition, with reference to the effects of regional planning rules restricting retail trading arrangements (OECD 2009:45). The performance of Austria's internal market is thus likely to be affected by the absence of a well conceived Better Regulation strategy. There are also likely to be opportunities for unlocking productivity gains through an assessment of restrictions on competition in the services sector. It is in Austria's interest to examine how to apply Better Regulation strategies to consider and identify these opportunities.

There is no clear expression of political support for Better Regulation which can establish its potential to deliver economic and competitiveness advantages, and no overarching strategy. The current imperative for Better Regulation appears to come from outside the Austrian administration from the Lisbon agenda of the EU. It is not driven from within Austria, by the political level within the executive, or by Parliament. In discussions with Austrian officials, the OECD review team noted no emphasis on competitiveness as a driver of Better Regulation initiatives. This raises the question as to whether there is an adequate allocation of resources within government dedicated to administrative

reform versus initiatives for economic reform. To be effective, a "whole-ofgovernment" policy on Better Regulation requires support at the highest political levels and has to be communicated to stakeholders. But there is, as yet, no overarching strategy for promoting the full potential of Better Regulation initiatives, and no broad policy statement on Better Regulation in the Austrian administration. The Ministry of Finance takes the lead on the administrative efficiency and administrative burden reduction goals and initiatives. The Legal Service of the Federal Chancellery has a broader perspective on legal quality. The production of the Better Regulation Handbook reflects a valuable step in promoting the Better Regulation initiative. But no Better Regulation champion has yet emerged.

The development of an overarching strategy on Better Regulation with strong political support would require a consensual approach and strong communication internally and externally. The elements of Better Regulation that are in place appear to be well understood, however the gap in understanding the potential of Better Regulation has to be addressed internally. Officials need to be made aware that the current emphasis in their activities is too focussed (as it also is in many other EU countries) on administrative burden reduction and other efficiency measures, at the expense of the potential for impact assessment, and other key aspects of effective regulatory governance. External communication and debate will also be needed. It is interesting that there is no broader public debate of the merits of better regulation.

The budget reforms can also be a vehicle for promoting better regulation. The full implementation in 2013 of the Austrian federal budget reforms will integrate the existing procedures for the *ex ante* assessment of the financial consequences of government regulation and projects on the budget and the administrative burdens on citizens and businesses. These assessments are planned to form an integral part of the future impact assessment framework. To the extent that they encompass an assessment of the broader economic impact of regulations, and are not confined to the impacts on the public sector or administrative burdens, the impact assessment initiatives proposed to be implemented under the federal budget reforms can be used to provide a strong foundation for advancing the broader Better Regulation strategy.

The Austrian government has successfully promoted the merits of its administrative burden reduction programme across government and its budget reforms. The initiatives in relation to the administrative burden reduction programme, the budget reform programme and the e-Government programme are all well publicised and appear to be well understood across government. For the achievement of these programmes, there was explicit institutional restructuring (for example, the establishment of the Federal Chief Information Officer, ICT Strategic Unit for e-Government; and the dedicated unit on administrative burden reduction for business in the Ministry of Finance). This involved the deployment of new resources and training and intense interface with stakeholders (notably chambers of commerce) in the design and implementation of the programmes, as well as to diffuse information on the initiatives and its intended outcomes. In addition, the Council of Ministers is currently considering the elaboration of an overall and integrated Better Regulation strategy "in and for Austria".

In general however, only single elements of the Better Regulation programme policy are being communicated. In the absence of an integrated strategy on better regulation, there is no basis for an overarching communication programme to promote its merits. This also means that some elements that contribute to better regulation, such as Austria's e-Government activities and the budget reforms may not be understood as an enabler of Better Regulation as this is not their primary purpose.

Austria has the facility for comprehensive programme and policy evaluation and the capacity to introduce sustained reforms. However, because no explicit regulatory policy yet exists

in Austria, comprehensive reviews of the strategy and its outcomes have not been carried out. The individual elements of the Better Regulation agenda have been subject to forms of *ex post* evaluation. Of these, the relatively institutionalised forms are the reviews of public consultation practices, and the administrative burden reduction strategy by the Austrian Court of Audit.

The use of ICT and e-Government systems is well advanced in Austria and could become an even stronger enabler of Better Regulation. Austria has well-developed e-Government systems for Better Regulation with strong links to other aspects of regulatory policy; for example the drafting of legislation within the e-Law system and the use of the electronic administrative burdens calculator and the business portal. However, there appears to be unrealised potential for synergies.

There would be merit in examining the extent to which the e-Law process can be enhanced to enable public consultation on the development of legislation. The e-Law making process might also help in mainstreaming Better Regulation and facilitating a wider focus such as legal quality and integrated impact assessments for new legislation. E-Government in Austria has been led to a certain extent by central co-ordination and steer. However, there also appears to be examples where the benefits of and the knowledge created within the policy field are not shared across the administration, arguing for further initiatives to share best practice.

Institutional capacities for Better Regulation

Within the Austrian administration there is a highly professional administration with a clear focus on administrative efficiency. The Austrian administration relies upon the efficient operation of institutions that operate with a high degree of autonomy to deliver their own policy agenda. Effective administrative relationships follow from established modes of operation which tend to be focussed on reducing administrative costs and promoting the quality of legal drafting. The absence of hierarchy in the executive and the principle of unanimity in the Council of Ministers mean that no single ministry has significant institutional leverage to impose an overarching policy on Better Regulation across the administration. While this creates potential opportunities for fruitful competition and internal benchmarking, it can also mean that good initiatives and practices which develop within agencies are not necessarily diffused across the government.

Whilst there is no specific institutional ownership of the Better Regulation agenda in Austria, three entities (the Federal Chancellery, the Finance ministry and the Court of Audit) currently play a key role which needs to be reinforced. Responsibilities and capacities for Better regulation are shared across the Austrian administration. This appears to have had the effect of making it difficult to establish accountability for Better Regulation and has undermined the organisational focus, attention to and resources for Better Regulation initiatives. However, the Federal Chancellery, the Ministry of Economy, Family and Youth, the Ministry of Finance and the Court of Audit are the existing basic structural elements on the institutional map of Better Regulation in Austria. Each of these institutions is engaged in important roles to promote the quality of rule-making processes and improve the design of regulatory proposals. The Federal Chancellery currently gives guidance on legal quality to other actors within the administration. It has the most comprehensive perspective on better regulation, but currently does not have the institutional leverage to enforce the adoption of a Better Regulation policy across the administration, as the role of the Chancellor is primus inter pares with no authority to set binding policy guidelines. The Ministry of Finance does not claim overall responsibility for better regulation. It has a strong focus on budgetary consequences and public sector efficiency. It monitors the delivery of the administrative burden reduction programme and provides the guidelines and tools to assess financial impacts on the budget. This is supported by the Court of Audit which oversees that the guidelines for the calculation of administrative costs have been followed, but does not extend its analysis to an assessment of the quality of the economic analysis supporting a

regulatory proposal. Improvements to the effectiveness of Better Regulation strategies could be expected to come from strengthening co-operation between these institutions.

A stronger gatekeeper function is essential to ensure that key Better Regulation policies, such as consultation and impact assessment, are carried out to minimum standards. A particularly important function is oversight of the Regulatory Impact Assessment process. This is needed to ensure that the analysis of the economic, social and environmental costs as well as benefits of regulatory proposals have been given thorough consideration. This requires staff trained in specific skills as well as the authority to challenge the adequacy of assessments, either directly with rule-making bodies, or by raising awareness of the quality of the assessments with decision makers, or possibly by publishing information for public consumption. The aim is to provide an incentive for proponents of regulation to undertake an early and thorough assessment of the implications of regulatory proposals and to consider any possible, more efficient, alternatives to regulation.

A further objective should be to identify and disseminate the good practices that are currently being undertaken by ministries, and to champion good ideas. For example, the OECD mission heard of commercial innovation by the Ministry of Economy, Family and Youth to make Austrian government services more competitive relative to other EU countries in the field of assessing import/export licences. The competition analysis that underpins this type of innovation should be captured as it could be transferable to other areas of government to improve productivity.

It appears that the Federal Chancellery is best placed to take primary responsibility as gatekeeper and co-ordinator for the implementation of an overall Better Regulation strategy. The Federal Chancellery already has a strong co-ordination function at the centre of the federal government and ensures the legal quality of proposals. In 2008, it prepared a handbook on Better regulation that mapped the main elements of a comprehensive Better regulation strategy. The Federal Chancellery designs and manages horizontal tools and programmes, and has competence over administrative reform.[1] It is for example responsible for the development of e-Government, the e-Law system, the RIS-system and the co-ordination of EU matters. The Chancellery also represents the Republic in front of the Constitutional Court, the Administrative Court and international courts. Broadening its role would depend on the Federal Chancellery being invested with the necessary political support to oversee the dissemination of better regulation. It would also require that the Federal Chancellery have an appropriate allocation of staff with relevant (including economic) skills. In principle, the role of assessing the quality of regulatory impact assessments could be undertaken either by the Federal Chancellery or the Court of Audit. It might not, however, be appropriate to require that the Court of Audit do the job of mainstreaming and strengthening Better Regulation is the task of the Court of Audit on its own as this could undermine its independence. Similarly, the Court of Audit should not conduct impact assessment itself. The Ministry of Finance would continue to play an important role in ensuring administrative efficiency assessing financial impacts on the budget and overseeing administrative cost issues as part of impact assessment. OECD principles an international practices show that the role of assessing the quality of RIAs is best assigned to a body at the centre of government.

Improving the capacity of the Austrian administration to undertake Better Regulation will also require further training and the development of supporting materials. One of the issues heard by the OECD review team was that insufficient resources are given to undertaking the important tasks of considering and reporting on the impacts of regulatory proposals in the *Vorblatt*. Building the capacity for Better Regulation in the Austrian administration is a core task. Beyond the training given on the standard cost mode to implement the administrative burden reduction programme, little else appears to be on offer. There is for example, no training in the conduct of impact assessment and evaluation of alternatives to regulation. The 2008 handbook on Better Regulation does not constitute a

comprehensive guide to implementing regulatory impact analysis. The development of a more comprehensive handbook/manual would assist the Better Regulation agenda. This should be supported by the development of online tools that at a minimum assist agencies to calculate compliance costs and identify the potential impact of regulatory proposals. Expanding the current training provided for the staff of the Courts of Audit could provide the basis for training programmes for other officials.

It also appears that, at the federal level, there is no systematic and ongoing legal drafting training for those involved in regulatory work. At the *Länder* level, the situation varies from *Land* to *Land*. However, there are *Länder* which seem to be more active in this field than the federal authorities and sometimes offer, in co-operation with the federal government, training for legists working at the federal level.

A stronger role is also needed for external partners, as Better Regulation programmes benefit from the incorporation of a variety of views. Many countries have sought to establish external bodies with responsibility for advising the government on how to implement Better Regulation and reviewing the achievements of Better Regulation programmes. The core membership of these bodies usually includes business representation. Within Austria, the institutional functions performed by the Social Partners are already often integral to the effective operation of government administration. They include providing a source of consultation on the impacts of proposals but can also extend to research and analysis on the effects of existing regulatory arrangements. Regarding this latter function, the Social Partners might be asked to conduct further studies on the effectiveness of regulation in specific areas to assist in informing the government where reforms efforts may be applied to the greatest social advantage. Any formal arrangements should be mindful of the need to have a transparent process taking account of the views of all stakeholders, including interests outside the Social Partners.

The Parliament needs to be encouraged into playing a stronger role in support of the executive's work on Better Regulation. Although the parliament does not have a specific Better Regulation orientation, its website on legislative procedures and consultations contributes significantly to communication and consultation practices. It also has a formal role in the "e-Law" process for the standardised development of regulations. However, it does not currently have a committee structure with responsibility for reviewing the effects of regulatory proposals, as exists in a number of other European countries.

The landscape of regulatory agencies in Austria is varied and dynamic. The practice of creating legally independent entities to undertake technical and administrative governmental functions appears to be in common use within Austria. . Part of the purpose of using this type of "des-incorporated body" appears to be to create staffing and budgetary independence for the performance of its functions. Of itself this may not be an issue, but it raises questions about the transparency of agency activities and of how to include these functions within the better regulation agenda. Like many countries, Austria cannot afford to maintain administrative overlaps and has an imperative to control its fiscal obligations to manage its budget. Furthermore, the diffusion of the better regulation agenda requires a comprehensive approach that involves and influences all agencies with rule-making or other coercive powers.

Apparently there is no central database listing all of the regulatory agencies in Austria, including the so called "des-incorporated bodies". The absence of a database makes it difficult to assess a number of critical issues relevant to whether the Austrian administration is receiving value for money from its regulatory agencies. For example, is the number, and the design of regulatory agencies, appropriate for the delivery of the government's policy programme? This can only be assessed by an examination of the administrative design of the regulatory agencies, which requires, as

a start, an audit of the number of organisations, their purpose, budgets and reporting frameworks. This may involve a review of the des-incorporation guidelines of 1992 (*Ausgliederungsrichtilininen* 1992) to determine if it provides a clear policy on the budget accountability, and organisation structure that is appropriate to the purpose of the regulatory agencies.

Transparency through public consultation and communication

Austria's public consultation approach is structured around formal and informal institutional relationships (including not least with the social partner) and the individual practices of ministries. The approach is robust in many respects, as the institutionalised relationships cover a wide range of relevant interests, and there is evidence of specific good practices. Some ministries, for example, put consultation results on their websites. The consultation process has a pre-consultation phase, and an official consultation phase. There is no administration wide forward legislative plan to use as a practical starting point for citizen engagement. In the first phase the competent federal ministries are responsible for commencing the development of regulations, including initiating contact with colleagues in other ministries as well as with relevant stakeholders including the Social Partners, the *Länder* and the Court of Audit. This part of the consultation exercise is not public, but depending on the political salience of the issue, Ministries may use the internet or mass media to inform the public. The subsequent official consultation phase involves the circulation of a draft bill. It is understood that this should occur for a minimum of six weeks, but in practice this may vary from two weeks to six months. Administrative requirements exist for consultation with the Court of Audit, the Social Partners and the legal service of the Federal Chancellery.

Austria's aim for its consultation practices should be to enhance transparency in the regulatory environment in order to ensure that all relevant aspects and interests have been taken into account, and to improve the quality of regulation. Effective public consultation has systemic benefits including improving the evidence basis for regulation and promoting legitimacy and trust. Citizen engagement is an important part of improving the design of rules and promoting acceptance of and compliance with rules. However, increased public participation can also present political challenges and mean additional administrative delay to the legislative process. It therefore requires careful planning and preparation. It also usually requires culture change to be successfully integrated within the administration. The development of a policy on public consultation supported by clear guidance documents can assist in promoting a commitment to citizen engagement within the administration. It clearly expresses the government's expectation that civil servants will engage the public and also provides valuable technical guidance to public officials on how to design effective public consultation and integrate the views of the public.

The approach is largely dependent on formal and informal relationships with the Social Partners, which can raise issues of exclusion. Of itself, the emphasis on consultation with the Social Partners is not necessarily detrimental to the development of good policy. The Social Partners can together claim membership representative of the majority of Austrian citizenry. The role of Social Partners at the pre-consultation stage is important for ensuring that representative views are taken into account in the development of regulations. But care is needed not to block out other interests. There is a risk that consultation processes do not provide opportunities to account for the views of all citizens, and may not pick up innovative perspectives. An effective system of public consultation must be able to assure the public that there is an opportunity for their views to be heard and considered outside the institutional relationships. The main challenge here appears to be to develop a systemic approach to facilitate early and open participation of citizens and other groups in policy development. The public notification of a forward plan of regulation can be beneficial in broadening awareness of forthcoming policy issues that members of the public may have an interest in (this is linked to forward planning which is addressed in Chapter 4).

Another key issue is how to ensure that there is consistent use of good practice across the administration. Although some ministries appear to be at the forefront of good practice, there are, for example, concerns that the conclusions drawn through consultation are not routinely made available to stakeholders. There is a demand for feedback about the results of consultation, in particular to understand how the information has been used, including from the Social Partners. In this respect, it appears that binding guidelines are required to give a clear direction to ministries as to what approaches should be followed. Apart from selected specific requirements there are no administration wide binding guidelines for public consultation. General standards have been developed but these have not been translated into enforceable formal requirements on institutions. Under the auspices of an inter-ministerial committee, *Standards for Public Consultation* applying to policies and programmes were developed. These were "noted" by the Council of Ministers in 2008, but regulatory bodies are not obliged to follow them. As a result, they tend to vary among institutions and could be improved through the establishment of more formalised arrangements applying across government. There are no committees in the parliament specialised on Better Regulation to make an assessment of whether consultation processes are being followed.

To be effective, guidelines need to be collectively agreed, and provisions made for monitoring and enforcement. The Federal Chancellery appears best placed to follow up on this as it already maintains and publishes a list of stakeholders that could be consulted in the preparation of rules. Current guidance, so far as it exists, extends to consultation on EU related matters. This should continue so as to ensure that the public administration is aware of procedures to be followed.

Austria's success in integrating its administrative procedures for rule-making with IT systems through the legal information system could be extended to public consultation. The spread of good practice can be encouraged by the use of IT tools. There appears to be considerable potential to make use of existing systems, to expand public access to early information about policy proposals. For example, other OECD countries have developed single consultation portals which enable government agencies to post notice of all forthcoming regulatory/policy initiatives at the one site including links to related background materials. This single portal approach reduces the transaction costs for government, business and citizens and can become the primary site for soliciting comment from all interested parties including citizens and organised groups. A portal of this type can also be used to manage the effective targeting of consultation to interested persons by allowing them to self select to be automatically notified when an issue falling within a category that interests them arises.

There are effective channels for the communication of regulations using electronic databases. The parliament plays an innovative role in promoting awareness of changes in the law. Austrian parliamentary practices involve the publication of material relating to all laws under consideration, including comments received from the public and interest groups. This is a good example of parliament taking the initiative to communicate with the public about regulation. However, it is more of a communication than a consultation facility, as it is remains the responsibilities of the Ministries to use the information collected by the parliament to influence the scope of legislative proposals. The requirement that all regulations have to be published on the Legal Information System of the republic of Austria (RIS) to have binding effect is a good example of using legal procedural requirements to ensure that the body of law is up to date, transparent and accessible to the public.

The development of new regulations

There is sustained use of regulation to achieve government policy goals, but no suggestion of regulatory inflation. Austria does not record changes in the overall quantum of the regulatory stock, but the review heard no evidence either of regulatory inflation or of significant trends in the decline in

the use of regulation. Available data provided by reference to the publication of new laws in the federal gazette each year generally indicates consistency in the use of primary laws and subordinate regulation over the past decade, with a slight decline in the number of new laws published in the period from 2003 to 2007.

The forward planning processes for law making are somewhat fragmented in Austria but shows an intelligent use of electronic systems for maintaining standards and quality control in the production of legislation. Cross ministerial co-ordination of rule-making is weak in Austria, with regulations being autonomously conceived within each responsible ministry. As a result forward planning policies vary from ministry to ministry. The proponent ministry is also responsible for initiating consultation with affected ministers, according to its own priorities. When notified, the Ministry of Finance reviews the assessment of the budgetary implications and administrative burdens of the legislative proposal and the federal chancellery checks the legal quality of the draft proposal, the Court of Audit assess compliance with the requirement to report the financial costs and administrative burden.

In this decentralised system, the e-Law system is intended to manage the quality control aspects of rule-making and promote the efficient management of the drafting of laws through a continuous electronic production channel, from the initial drafting to promulgation of the law. The e-Law system ensures that ministries remain consistent with the guidelines issued by the Federal Chancellery through the use of a template approach. The e-Law system is only accessible by password to staff of the federal ministries. This is an innovative approach to the electronic management of rule-making that is not yet in widespread use across the OECD. There is likely to be the potential to extend this electronic tool further in the legislative process to include amendments introduced in parliament and apply compatible tools for use at the level of the *Länder*.

While Austria reports that forthcoming regulation can be anticipated to be consistent with the published overall programme of the federal government, there is no consolidated legislative plan. The Austrian government reported selected cases of forward planning of rule-making, including examples from ministries which published planned legislative projects, and internal planning tools used by the Federal Chancellery to manage legislative projects. This suggests fragmented practices across the government that could be improved through the application of a consistent planning discipline and notification procedure. The use of a consolidated forward planning schedule would aid transparency and the effective management of legislative drafting, and be useful for monitoring that other policy processes such as consultation and the preparation of impact analysis are being organised in a timely way. A forward planning schedule does need to be binding on agencies to be useful, and it should not be an impediment to the timely development of unanticipated but necessary legislative responses. A planning framework could build on the internal planning tools used by the Federal Chancellery and be linked to proposed regulatory measures identified in the forward budget estimates of agencies.

In spite of the existence of important administrative provisions and signals of an emerging awareness of the importance of the tool, Austria has not developed integrated and formalised systems for the *ex ante* analysis of the impacts of proposed regulation. The procedural requirements include an obligation on officials to assess the financial economic, environmental and consumer effects of new legislation. Technically, officials are required to provide an account of these elements in the *Vorblatt*, a statement of effect that accompanies a legislative proposal. In the recent past, moreover, promising initiatives have been taken that signal an increased attention of the government to enhancing the RIA tool. The Austrian administration is aware of the need to strengthen arrangements in respect to the effective implementation of RIA. Particular mention deserve the debate on introducing the so-called Climate Impact Test and, more significantly, the new provisions included

in the 2009 Federal Budget Law, which requires that from 2013 all "essential" impacts of future legislative proposal be assessed.

In practice, there are no effective systematic mechanisms for ensuring that officials formally undertake *ex ante* analysis of regulatory impacts during the development of a regulatory proposal. Notable areas of weakness include an absence of systematic guidance material on the calculation of costs and benefits of regulatory alternatives, and no effective oversight of the process to ensure compliance with RIA requirements. OECD analysis has found that RIA is unlikely to be effective in improving the quality of regulatory proposals unless it is supported by these systemic elements as well as training and political commitment. Simply having a procedural requirement for RIA will not produce the benefits of improved regulatory design that are expected from regulatory impact analysis. A potential deficiency of RIA that has been observed in practice in OECD countries is that it is often relegated to a check box exercise. To be effective RIA has to be incorporated early in the policy process and have the potential to influence policy outcomes.

The current arrangements are unlikely to ensure that officials have undertaken a thorough economic assessment of the costs and benefits of alternative regulatory proposals. Where there is a stronger focus on *ex ante* analysis is in respect to the calculation of the financial impacts of policy proposals. The Federal Minister of Finance has issued an ordinance on presenting and assessing financial impacts and the ministry appears to be alert to the proper assessment of financial impacts. This role is aided by the Court of Audit which examines regulatory proposals for compliance by ministries with the requirement to assess financial impacts. Similarly, with respect to environmental impact assessment, Austria has incorporated formalised practices including an innovative mechanism for assessing the carbon output of government programmes.

The Austrian administration is aware of the need to strengthen arrangements in respect to the effective implementation of RIA. Further to the new Federal Budget Law of 2009, ordinances as well as guidelines are planned to be issued by the Federal Chancellery and the respective Ministries to address threshold issues such as what impacts are to be considered and what methodology should be used. This is however, an area that requires further work in Austria. The current Handbook on Better Regulation (2008) does not provide an effective tool for guiding policy analysts on how to undertake RIA. Accordingly the construction of a clear and practicable framework for undertaking RIA and carefully assigning responsibility for assessing the quality of RIA will be critical to its effective contribution to policy development in the future.

Responsibility for oversight of the conduct of RIA in the rule-making process should be assigned to a function within the Federal Chancellery, with the role of preparing guidance on the use of RIA, engaging with ministries to ensure its performance (including through training and capacity building) and having some form of oversight and veto role on poor quality regulatory proposals. It is important that the regulatory oversight role is located at the centre of government to ensure that it has the necessary political authority to promote the effective contribution of impact analysis to policy development, and that it is integrated procedurally in the law making process. The Federal Chancellery seems to be the single best authority to take on this role, however, the skills of analytical staff allocated to the task cannot only be based in an assessment of legal quality, but must also include staff skilled in economic analysis and in particular the economics of regulation.

Some of the issues that will confront the Austrian administration are ensuring that all regulatory proposals with the potential for significant economic, environmental or social impacts are captured, and also balancing the use of scarce policy resources. One way of addressing this chosen by a number of OECD countries, is through the use of a two stage process, including a screening assessment to identify if a policy proposal requires a more elaborated RIA; a compliance

cost calculator can help to streamline this process. It is likely to take some time to embed a RIA system in the rule-making process. Accordingly, the preparation of draft guidelines should be commenced without delay. The draft guidelines should be prepared in consultation with ministries to engage them with the scope and application of the guidelines and to encourage their use. However, at their root the guidance should draw on the OECD and EU best practices for RIA and relevant examples from other OECD jurisdictions. Critical aspects include a clear focus on defining the nature and extent of the problem to be addressed (risk analysis).

Another important methodological aspect is the consideration of potential of any regulatory proposal to impact positively or negatively on competition. The OECD Economic Survey of Austria identified that "the rules governing market entry and the creation of new corporations, as well as various sectoral regulations are not sufficiently supportive of competition, innovation and productivity growth". (OECD 2009:12). This has undermined productivity growth in the services sector. The RIA system can assist in preventing the development of regulations that are welfare reducing restrictions on competition.

A further element is the integration of RIA with public consultation, as transparency and the incorporation of a diverse range of perspectives are integral to the credible use of RIA to ensure its effectiveness and legitimacy in evaluating alternative options. This will require officials to move beyond informal modes of consultation to use a more systematic inclusion of interests external to the government. Experience across the OECD demonstrates that implementing a system of RIA is not straightforward. It is a long-term endeavour requiring cultural change and capacity building. Accordingly, Austrian officials should anticipate that this project will require the reform of some existing practices and modes of working. To be effective it will be necessary that the procedural elements of RIA are clearly defined, integrated with the rule-making process and made mandatory by formalising the requirements of the guidelines.

Austria has considerable experience with the use of co-regulation through the delegation of rule-making powers to public law chambers giving a regulatory role to the Social Partners. However, as currently formulated, the RIA processes do not appear to be effective in ensuring that alternatives to regulation are considered in the development of regulatory proposals. Formally, the *Vorblatt* requires ministries to consider alternatives, including the do nothing option in evaluation of the effectiveness of regulatory proposals. In general this is an area of regulatory quality where all governments find it is difficult to encourage rule makers to give serious consideration to alternative approaches once a policy decision has been made to use regulation. It is advisable to provide guidance and training on the use of alternatives in building the capacity of officials to use RIA effectively. The use of co-regulation through the delegation of rule-making powers to public law chambers giving a regulatory role to the Social Partners is a potential strength of the Austrian system. While this may create some risks of compromises to competitive efficiency, there is obviously potential for these measures to reduce regulatory costs and promote economically efficient outcomes which should be fully explored in RIA.

There is no formalised policy on the adoption of risk-based approaches. There is likely to be considerable potential for improving the contribution of risk-based approaches to improving the efficiency of compliance and enforcement practices. This is particularly the case at the administrative level of the *Länder* through the identification and sharing of good practices (see the recommendation in Chapter 6 on the development of a principles based framework for assessing the quality of enforcement practices and the preparation of draft guidance for agencies).

The management and rationalisation of existing regulations

The Austrian government has undertaken various general simplification initiatives to keep the stock of regulation up to date. These have been mostly for the purpose of removing outdated provisions and repealing ancient regulatory stock and have been applied across the ministries. Co-ordinated approaches include the first Federal Repeal Act (1999) guillotined rules dating before 1946, the Deregulation Law (2001) which requires federal authorities to examine the relevance existing law and the effect of any proposed amendment, and the Deregulation Law of 2006 which repealed legal provisions made obsolete by the accession to the EU. The use of sun-setting provisions is not routine in legislation although there are cases of its use among agencies.

The fuller use of *ex post* processes to evaluate adopted regulations and to ensure that the regulatory stock is kept fully up to date should be considered. This can be achieved for example, through the incorporation of sunset clauses in legislation and targeted regulatory reviews. It is noted that the new Budget law foresees a compulsory internal evaluation of regulations and projects which when implemented could also provide a basis for systematic review.

The identification and reduction of administrative costs is a strong feature of the Austrian system. The administrative burden reduction programme is sensibly based on the achievement of a *net target* of 25% of administrative burdens on business. The programme demonstrates a good balance of central oversight and devolved responsibility. It is managed from within the Ministry of Finance, and each individual ministry has been assigned the responsibility for achieving its own reduction. The design of the programme has been intelligently informed by a review of similar European programmes. Like a number of these programmes it included a baseline assessment of the regulations in force (not including the *Länder*). The programme commenced in 2006, initially focusing on business. In September 2007, *ex ante* assessment was introduced of the burdens of new regulatory policies above a certain threshold. In 2009, the programme was expanded to include the 100 most burdensome obligations on citizens (in conjunction with the Federal Chancellery). It is estimated that achieving the target will bring about more than EUR 1 billion in savings by 2012.

The goal of reducing administrative costs is aimed both at ensuring the efficient operation of the Austrian administration and reducing administrative burdens on business. The first objective is reflected in a requirement on ministries to calculate and report the costs to government of any new administrative activities as a consequence of regulation. These requirements are likely to have aided the performance of the administrative burden programme by avoiding the hidden problem of ministries meeting their administrative burden target objectives by bringing administrative functions in house, instead of removing or reducing them.

Austria has been progressive in the use of ICT solutions to support its administrative burden reduction programme. Since September 2009, the administration of the programme has been supported by the use of sophisticated ICT tools for the calculation of administrative burdens using the standard cost model and integration with the "e-Law" system. General guidelines have been provided and training is offered by the Ministry of Finance. The ordinance on the use of the standard cost model is binding on ministries and provides the methodological and procedural rules for ensuring that the burden is calculated and reported in the introductory remarks (*Vorblatt*) of the regulatory proposal. Austria has also implemented a number of ICT solutions that have reduced the transaction costs of administrative requirements. This includes the integration of information and transaction services for all levels of government in a single portal for business, which is being progressively implemented from 2010 to 2013.

The programme is apparently on track to achieve its net target. The Ministry of Finance regularly monitors new burdens and reduction measures by Ministries and publishes them in an excel table on the programme website. Future budget materials are planned to contain a performance report on the status of burden reduction by all Ministries. Being held to account against performance targets sharpens the incentives for achieving burden reductions. Effective reporting on the outcomes of the programme also helps to assess its overall performance and identify areas of success, and allows the merits of the programme to be fully communicated to business. To a large extent the merits of administrative burden reduction programmes can be expected to come from ministries achieving their targets by imitating and adapting the successful reform experiments of other ministries. Sharing experience therefore can be potentially very helpful. Finally, the functional role of the Ministry of Finance in combining budget discussions with a consideration of measures for reducing the burden of regulatory proposals could be explored, following the experience of other EU countries.

An evaluation of the effectiveness of the programme against the original goals and the scope for broadening its reach to cover full compliance costs would be timely. Part of this assessment should be to assess perceptions of business of the effectiveness of reductions in administrative burdens. Related to this, the merits of the burden reduction strategy including its aims and aspirations should be strategically communicated to business to secure support. There appears to be potential for expanding the use of the existing ICT tools used for calculating the SCM, as well as to calculate broader compliance costs. This could be combined with better use of reporting frameworks (the *Vorblatt* in particular) in accounting for an analysis of the economic impacts of regulatory proposals. An expansion of the programme to this effect should build on the collaborative relationship that is in place between the Ministry of Finance, including the role of staff currently overseeing the administrative burden reduction programme, and the Federal Chancellery to provide support to ministries in assessing and reporting on the design and costs and benefits of regulatory measures. It is noted that the future assessment of compliance costs is part of the discussion of the new impact assessment procedures being planned for under the current budget reforms.

The administrative burden reduction programme measures do not extend to the information obligations imposed by the *Länder*. The potential for a co-ordinated programme including the *Länder* could be explored to take advantage of the opportunities for shared practices and lessons among the *Länder*, in particular this would be expected to address the burdens imposed through the enforcement of federal laws.

A number of e-Government programmes have been developed in response to demands for improving internal administrative efficiency. However, there is no co-ordinated administrative burden reduction programme to counter the growth of regulation inside government.

Compliance, enforcement, appeals

Some regulatory agencies have coherent strategies for compliance and enforcement that are well managed. The OECD review heard of examples of good practice; for example the comprehensive risk-based strategy employed by the Austrian tax office. It was also suggested that fiscal constraints limiting the resources for compliance and enforcement have provided an incentive for the *Länder* to develop risk-based approaches and apply efforts in the most effective way. In addition it is reported that the *Länder* have already engaged in a discussion of the establishment of national uniform quality standards for maximum waiting times for citizens and as well performance targets for satisfaction with service standards.

Austria could benefit from the development of a framework approach to compliance and enforcement. A focus on improving compliance and enforcement strategies is a relatively new field

for the Better Regulation agenda. However, it has considerable potential for reducing the burden on business of regulatory activity and improving the effectiveness of the design of regulation and its implementation, thereby resulting in improved outcomes for citizens and lower costs for the state. A comprehensive and strategic approach to improved compliance and enforcement can help to improve efficiency. This can be achieved in part through sharing good practices among ministries, agencies and jurisdictions with regulatory missions. Furthermore, by focusing on those activities which presents the greatest risk to the achievement of policy objectives, and on those businesses that present the greatest risk of non compliance, the resources required for enforcement by the government and for compliance by business can be allocated more efficiently.

The enforcement of regulation is a principal responsibility of each Land, which allows for wide variance in practices and resultant inefficiencies. This suggests that there is considerable potential for sharing information on new strategies for improving compliance taking account of technical innovations and potential synergies from common practices across the *Länder*. There is no suggestion that the rates of compliance in Austria are low, but Austria does not collect and report statistics on general compliance rates. Accordingly, as a starting point it would be prudent to collect information on compliance problems across the *Länder* to develop a strategic picture of any underlying trends and difficulties, based on the information already collected by regulatory agencies.

The *Länder* Courts of Audit would benefit from having a principles based framework for assessing the quality of enforcement practices and draft guidance for agencies on the adoption of risk-based approaches (see Chapter 8). This should be supported by a survey of the range of compliance problems across the *Länder* and be grounded in the experiences of regulatory agencies at the level of the *Länder*. Reference to practical examples from within the EU and other countries from within the OECD also merits study as a basis for comparative approaches (in particular, examples from the Netherlands, Denmark, the U.K. and Australia).

The institutional arrangements of the Austrian appeals system are comprehensive and appear to function well, supported by a system of arbitration tribunals and the independent ombudsman's office. In addition Austria has developed an extensive IT network which promotes the efficient administration of the judicial system and electronic access to the records of legal proceedings free of charge on the Internet, as part of the Federal Legal Information System (RIS).

The interface between member states and the European Union

As in other EU countries the influence of EU regulations in Austria is significant and a well structured institutional framework is in place to co-ordinate EU affairs. Austria appears to have established wide-ranging and effective co-ordination mechanisms for the management of EU affairs including the transposition of EU directives, with leadership from the federal government but also allowing for the *Länder* to take responsibility and exert influence within their sphere of administrative competence. Austrian officials are conscious of the need to have an effective influence in the negotiation stage of EU legislation. Within the federal government the internal co-ordination of EU affairs is led by the Ministry of Foreign Affairs (MFA) and the Federal Chancellery, but each ministry within the government leads on EU dossiers within its area of responsibility.

Binding guidelines for all federal ministries and the *Länder* relating to the negotiation, transposition and infringement phases have been in place since 2003. In 2003, the Ministry of Foreign Affairs (MFA) and the Constitutional Service of the Federal Chancellery produced binding guidelines. The 2008 Better Regulation handbook references the EU Better Regulation programme. The system appears to work well as regards transposition deadlines. In general the speed of transposition does not appear to be an issue.

Transposition procedures may not be dealing effectively with the issue of unnecessary administrative burdens. In general, Austria practices the incorporation of directives into the existing stock instead of creating new implementation laws. Despite this, EU regulations are considered to have a potential negative impact on the quality of national regulations through the burdens they cause. An internal network of officials from each of the ministries meets regularly to discuss issues that arise with transposition. However, there is no specific procedure for supervising the consistency of Austrian legislation with EU law. The relevant ministry is responsible for ensuring transposition and the removal of inconsistencies and there is no mechanism established to evaluate the burdens that may be caused by EU regulations. It seems clear that there should be a procedure for supervising the consistency of EU law with Austrian national regulation, and a process to consider the costs and benefits of alternative means of incorporating EU directives without creating unnecessary regulatory burdens. The Ministry of Finance anticipates that the regime of the Budget Law of December 2009 – coming into force in 2013 – will strengthen the financial impact assessment of draft EU law.[2]

The *Länder* are also closely involved in the process of consultation and negotiation. The *Länder* have a constitutional right to comment on legislative drafts, and if they have implementation responsibility at the federal level, they also co-ordinate and represent Austria at the EU in Brussels. The ministries and the *Länder* have to inform the Chancellor on a regular basis about their progress with transposition. If a state fails to comply punctually the federal government may acquire responsibility for the implementation of a transposition obligation.

However, the rapid evolution of EU legislation is a particular challenge for federalist countries and Austria is no exception. First, the Austrian authorities (Federation and *Länder*) have to organise themselves in order to enable them to participate actively and effectively in the preparatory stage of the EU legislative process. Second, they have to take into account that that the often short deadlines fixed for the transposition of EU legislation necessitates an optimal co-ordination between the authorities at the federal and at the *Länder* level. In practice, the involvement of the *Länder* authorities could be more systematic and, take place earlier in the legislative process. It would benefit from clearer institutional arrangements providing the necessary time for legislative and administrative measures at the *Länder* level. Furthermore, there seem to be different practices and rules with regard to the formal legal drafting procedures of the integration of EU legislation into national law.

The interface between subnational and national levels of government

The Austrian Constitution contains the basic rules relating to the allocation of legislative powers. The Constitution identifies where the Federation has the exclusive responsibility for legislation and execution, where the execution of federal legislation is left to the *Länder*, and where the *Länder* have their own legislative and executive powers. However, not all provisions concerning the allocation of legislative powers between the Federation and the *Länder* are integrated into the Constitution, leading to some apparent difficulty in delimitating the legislative powers of the Federation from those of the *Länder*.

The *Länder* have a critical role in regulatory management in the federation as they are responsible for the execution of most federal law. In Austria, the execution of federal legislation is in many fields left to the *Länder*, and in the fields where the legislative powers of the Federation are limited to the principles, the *Länder* are also responsible for the enactment of secondary regulations as well as the application and enforcement of federal laws. More broadly, two thirds of public employment is at the *Länder* and municipal level, and the *Länder* are responsible for delivering significant programme activities including the delivery of health and education services. The OECD 2009 Economic Survey of Austria identified that assuring the efficient functioning of the *Länder* is critical to the development of the credible fiscal consolidation measures that are required in Austria

(OECD 2009:12). It also noted the potential for differences in *Länder* regulation to reduce market competition, with reference to the effects of regional planning rules restricting retail trading arrangements (OECD 2009:45). Given their size and influence, further investment in efforts to improve the development and delivery of regulation by the *Länder* are therefore warranted.

The implementation of federal legislation by the *Länder* can involve the enactment of secondary legislation by the *Länder*. This creates an institutional distance between the preparation of legislation and its execution. This distance is possibly one of the reasons why Austrian legislation is quite detailed: in order to achieve a more or less uniform interpretation and application by the *Länder* authorities, the federal legislator tends to be rather precise. On the other hand, this distance makes it more difficult for the federal authorities to know what happens once legislation is enacted. In other words, they lack the information necessary to know if federal legislation proves to be implementable and achieves its goals or if it needs to be adapted.

Their significant regulatory responsibilities mean that the *Länder* should in practice be closely associated with the preparation of new legislation at the federal level. The participation of the *Länder* in the legislative process at the federal level fulfils two important functions: it contributes to the quality of legislation and it strengthens the *Länder* as constituent element of the Federation. In addition, the consultation of the *Länder* permits them to better co-ordinate their own legislative activities (in fields falling within their residual powers) with the legislative activities at the federal level. In this sense it may also contribute to the overall coherence of national legislation. The *Länder* are consulted before legislative decisions are taken in policy fields where they are responsible for the implementation (in a broad sense) or for the execution (in a narrow sense) of legislation, because federal legislation must take into account problems of practicability which are best assessed by the authorities at the level of the *Länder* or even the municipalities.

However, in spite of its practical and institutional importance, the participation of the *Länder* in the legislative process at the federal level is not regulated in a comprehensive way. There are some fragmentary provisions, partly in the Constitution (for example, Article 14b, Para. 4), partly in primary legislation (especially in the context of Austria's membership in the EU), partly in administrative instructions, but the modalities are essentially governed by administrative practice and may vary from case to case and from ministry to ministry. Various inter-governmental bodies set up to facilitate the horizontal (among the *Länder*) and vertical (between the *Länder* and the Federation) co-operation play a major role in this context.

Legal and administrative arrangements that guarantee a minimum level of reporting about implementation and effects should also be strengthened. They are particularly important in federalist countries to ensure the quality of legislation. This may be done in various ways (setting up of organs with special monitoring or reporting tasks, introducing evaluation clauses in federal legislation, using the existing inter-governmental bodies in order to get more reliable and relevant information about the implementation of federal legislation, etc.). Monitoring implementation and evaluation of the effects are the necessary complements to regulatory impact assessments (RIA) or prospective evaluations undertaken in the preparatory stage of the legislative process. At the moment, a clear institutional responsibility is missing and the resources are insufficient.

There has been a change in culture over that last decade to improve the quality of customer services that the *Länder* governments provide. This review has not had the benefit of a comprehensive survey of Better Regulation initiatives at the *Länder* level, but in interviews officials reported a change in culture, and a sample of activities shows evidence of a focus on administrative efficiency and improving the delivery of services to citizens. There appear to be examples of good practice; programme responses vary across the *Länder* and some have developed impact assessment

requirements and administrative burden reduction programmes. Overall, however, these are not comprehensively applied. The *Länder* are not linked to the federal administrative burden reduction programme and implementation of impact assessment, for example, has tended to follow from the initiative of individual civil servants. The relatively few resources specifically dedicated to RIA in a few *Länder* is considered to be one of the underlying reasons why it has been difficult to sustain efforts to introduce the tool. While the impacts of regulatory proposals on administrative costs are often assessed, broader cost benefit analysis is not routinely undertaken.

Austria needs to ensure that the effect of different administrative and regulatory arrangements within *Länder* does not impose barriers to entry or high transaction costs impeding the efficient operation of businesses across the federation. In principle, this suggests the need for an assessment of the areas of regulatory responsibility of the *Länder* that may be of concern to businesses operating across different parts of the federation, and an analysis of the number of such businesses. This could be best performed by the national statistical agency.

The vertical and horizontal co-ordination arrangements between the federal government and the *Länder* appear to be a notable strength of the Austrian federation. Co-ordination mechanisms are usually a particular challenge for multilevel governance. In Austria's case, conferences are regularly convened between representatives of the nine *Länder*. These conferences (*Landeshauptleutekonferenzen*) are informal meetings of the nine state governors and have important political impact. The nine state governors discuss common positions and develop common strategies – the chair alternates. They are supported by a permanent liaison office of the *Länder*. Besides the *Landeshauptleutekonferenzen* there are also informal preparatory meetings at technical level: the *Landesamtsdirektorenkonferenz* Representatives of the federal government are regularly invited to both of these conferences (political and expert level respectively).

Austria should use its sophisticated co-ordination mechanisms to promote a common strategy for Better Regulation at the sub-federal level. This should include the incorporation of impact assessment principles for improving enforcement and compliance and sharing of good practices among the *Länder*. The *Länder* Courts of Audit already play an important role in assessing the efficiency of *Länder* programmes. There appears to be considerable potential for expanding this role to include the sharing of good practices among the *Länder* and promoting improved regulatory performance. This could be done for example, through the various *Länder* Courts of Audit jointly developing a principle-based framework for assessing the quality of enforcement practices, particularly risk-based approaches, and drafting guidance for regulatory agencies, such as has been done by the audit offices of a number of OECD governments (see for example, Australia and the United Kingdom).

A special feature of Austrian legislation is its rather detailed content, which makes normative density of primary federal legislation rather high. This may be due to legal requirements (quite a strict conception of the principle of legality); the specifically Austrian legal drafting culture or style, and; the endeavour of the Federation to guarantee a uniform or at least a largely harmonised implementation (secondary legislation enacted by the *Länder* and execution) at the subnational levels by leaving only quite a small margin to the implementing authorities. This may favour legal security and make state action more easily foreseeable, but it can also make legislation more rigid and more difficult to understand. If legislation is too detailed, the need grows to change it frequently, potentially compromising its stability. In addition, the very detailed character of many pieces of Austrian legislation contributes to the overall quantity of norms. Reducing normative density would have positive qualitative and quantitative effects.

Key recommendations

Strategy and policies for Better Regulation	
1.1.	Establish a comprehensive policy on Better Regulation taking full account of its potential to improve the design and administration of new and existing regulation, set within a clearly articulated policy framework for meeting the government's policy aims and strengthening the overall competitiveness of the Austrian economy.
1.2.	As part of this, define an institutional framework for its delivery, setting out clearly the roles of key stakeholders within and outside government, and a timetable for implementation. The policy should be given political endorsement by the Council of Ministers.
1.3.	To secure its relevance and effectiveness, prepare the policy through an iterative consultation process with input from government ministries, the Social Partners and the wider community.
1.4.	Following the establishment of a comprehensive policy on better regulation, develop a communications strategy to ensure that it is well known and its benefits are understood by stakeholders within and outside government.
1.5.	Include, in the establishment of a comprehensive policy on better regulation, terms of reference and a schedule for the review of the effectiveness of that strategy in achieving its policy objectives.
1.6.	The strategic framework for e-Government should be examined for its potential to further support Better Regulation processes, including promoting transparency, public consultation and reducing the transaction costs for officials engaged in preparing impact assessment on regulatory proposals.

Institutional capacities for Better Regulation	
2.1.	Establish a core working group of Better Regulation champions, at both ministerial and official level, chaired by the Federal Chancellery, and including the Finance ministry, the Court of Audit and any other key and committed player in the central Federal administration (for example, the Economy ministry), to develop and promote a Better regulation strategy.

2.2.	Consider how to secure an effective gatekeeper function to co-ordinate and monitor minimum Better regulation standards across the administration, especially as regards impact assessment, but also with regard to public consultation and other important issues such as forward planning of legislation. Ideally, the Council of Ministers should formally invest the Federal Chancellery with this role.
2.3.	Undertake a Better regulation training needs assessment including methods of delivery and existing forums that could be adapted, such as the Court of Audits programme, to improve the capacity of the public administration to design and implement better regulation.
2.4.	Give responsibility to the Federal Chancellery, as part of its Better regulation functions, for developing comprehensive training programmes on Better Regulation for the Austrian administration. Ensure that this is supported by the development of guidance documents and IT tools to assist with undertaking impact assessment (including competition analysis), the evaluation of regulatory alternatives, and consultation.
2.5.	Consider the development of more systematic and permanent legal drafting training for those persons involved in legislative work at the federal and at the *Länder* level.
2.6.	Consider whether the Social Partners should be asked to undertake further studies on the *ex post* effectiveness of regulation in specific areas, taking care to ensure that any process remains transparent and takes in all relevant views.
2.7.	Encourage the Parliament to play a more active role in Better regulation, including by fostering political debate on the benefits of broader strategy of Better Regulation. The parliament should support the Government in developing and achieving its Better Regulation agenda.
2.8.	Undertake an audit to centrally record the names and functions of all regulatory agencies, including budgetary, staffing and reporting relationships. Identify which of these agencies have coercive or rule-making powers. Once established the database should be maintained and updated, and made available for public access. The goal should be to identify how they can be involved in the Better Regulation agenda, through for example, the inclusion by the parent ministry of requirements for Better Regulation initiatives in the mission/objectives statement of the regulatory agencies.

Transparency through public consultation and communication	
3.1.	Draw up and adopt (through the Council of Ministers) comprehensive guidelines on public consultation, to set minimum good-practice requirements on ministries in the development of new regulations. These guidelines should address planning, timing and methods of consultation as well as feedback to stakeholders on. Minimum requirements should also include publication of a summary of the results of consultation, and making this summary a part of the explanatory memorandum attached to a proposed bill. The guidelines should continue to address consultation on EU related matters.
3.2.	Establish how the guidelines will be promoted, monitored and enforced. Consider putting the Federal Chancellery in charge, including giving it the authority to return a draft regulatory proposal to the ministry if the minimum requirements have not been followed.
3.3.	Expand the use of existing IT systems in the preparation of regulation including a clear link between public consultation and the drafting process. Develop a single consultation portal for use by all ministries to enhance citizen participation in the legislative process.
3.4.	Ensure that all related policy materials, including all guidelines and instructions that may be required by a civil servant preparing draft legislation, are available electronically from a central repository linked to the e-Law system (or the new consultation portal – the portal should be accessible from outside the public administration, but the facility could provide that material that is relevant only to officials is able to be accessed separately).

The development of new regulations	
4.1.	The Federal Chancellery should co-ordinate an annual formal plan of forthcoming legislative projects, as a communication and planning tool both for internal government use and to promote public transparency as well as better structure public consultation. This should include lists of all projects which Ministries have under preparation, even before they have reached the (pre)consultation phase.
4.2.	Develop administrative mechanisms to support the incorporation of *ex ante* analysis in the development of regulatory policy including formal administrative requirements, the development of RIA guidelines and training and capacity building involving the ministries. Many OECD examples and

	models exist for the guidelines, but the implementation of the system is an opportunity for an interactive discussion with ministries and the establishment of a network of officials informed on how to use the RIA process effectively.
4.3.	Establish a two stage process for impact assessment including clear minimum threshold criteria to identify when a RIA is required and the use of compliance cost calculators to simplify the process of determining the extent of regulatory impacts.
4.4.	Establish institutional oversight of compliance with RIA processes in the Federal Chancellery including economic analysis skills to assess and comment on the quality of the RIA documents, the role of preparing guidance on the use of RIA, engaging with ministries to ensure its performance (including through training and capacity building) and having some form of oversight and veto role on poor quality regulatory proposals.
4.5.	Guidance and training to build the capacity of officials on the use of RIA should also address the use of alternatives in designing regulations, including an analysis of the most effective roles for the Social Partners having regard to the potential risks to competition.

The management and rationalisation of existing regulations	
5.1.	Develop a policy framework for the *ex post* review of regulation drawing on the RIA methodology to ensure that the regulatory stock is kept up to date, and meets policy objectives efficiently and effectively. Relevant programme features for consideration should include: the systematic use of sunset clauses; the use of review clauses in primary and subordinate legislation; scheduled reviews of regulation in sectors, targeting those areas of high economic value, and; the use of external reviewers (independent of the ministries administrating the regulation) to conduct periodic reviews.
5.2.	Promote the success of ministry activities at achieving their individual net reduction targets, to include providing information on the performance of ministries against their targets and sharing of information about practical measures that can be implemented and adapted among ministries. Consider the use of incentives for compliance by associating performance with budget decisions (for example, rewarding the achievement of burden reduction targets with discretionary budget measures, or requiring an evaluation of regulatory costs in conjunction with budget bids).

5.3.	Establish a framework to evaluate the success of the administrative burden reduction programme in reducing burdens on business. Include an assessment of the perceptions of business of the most successful burden reduction initiatives.
5.4.	Consider how processes may be adapted, expanded or joined up more closely with *ex ante* impact assessment processes to improve the evaluation of substantive compliance costs of regulation in the future.
5.5.	Develop collaborative programmes with the *Länder* to extend the administrative burden reduction programme, including sharing good practices and common ICT tools for the calculation of administrative burdens on the basis of the standard cost model. Consider the use of central reporting of overall burden reduction measures achieved at the federal level and at the level of the *Länder*.
5.6.	Consider whether there is a need for a distinct policy to address administrative burdens inside government.

Compliance, enforcement, appeals	
6.1.	Undertake a survey using the records already compiled by agencies to develop a strategic assessment of the underlying trends and difficulties with compliance and enforcement practices.
6.2.	Engage the *Länder* Courts of Audit to jointly develop a principle-based framework for assessing the quality of enforcement practices and the preparation of draft guidance for agencies, with reference to good practices within Austria and examples from other jurisdictions.

The interface between member states and the European Union	
7.1.	Produce guidelines to apply impact assessment to EU regulations at the transposition stages, to ensure that the incorporation of EU directives does not duplicate Austrian law or create unnecessary burdens.
7.2.	Consider formalising the processes by which the representatives of the *Länder* are informed about and involved in the early stages of the legislative process at the EU level. Establish clear and uniform legal drafting techniques regarding the integration of EU legislation into national law at the federal and the *Länder* levels.

The interface between subnational and national levels of government	
8.1.	Set up clear legal rules concerning the participation of the *Länder* in the legislative process at the federal level in order to determine which organs participate, when in the process and how the results are communicated.
8.2.	Improve monitoring of the implementation of federal legislation by the *Länder* and the evaluation of the effects of legislation.
8.3.	Undertake an assessment of the areas of regulatory responsibility of the *Länder* that may be of concern to businesses operating across different parts of the federation, either because of unnecessary transaction costs or possible barriers to entry.
8.4.	Use co-ordination mechanisms with the *Länder* to encourage a Better Regulation strategy for the *Länder* governments, including a focus on developing and sharing best practice to improve enforcement and compliance strategies. Encourage the *Länder* courts of audit to develop a principles based framework to assess enforcement practices.
8.5.	To reduce the overall normative density of federal legislation in Austria, make efforts to avoid unnecessary details and to limit provisions to the essential normative content in primary federal legislation.

Notes

1. See: *Bundesministeriengesetz*, Part 2A 5b.
2. *Source:* § 17 (5) Federal Budget Law 2013.